

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Victor Glen Wilkes,)	
)	Cr. No. 0:15-3084-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
L.R. Thomas,)	
)	
Respondent.)	
_____)	

Petitioner Victor Glen Wilkes is a prisoner in custody of the Bureau of Prisons who currently is housed at FPC-Edgefield in Edgefield, South Carolina. On September 4, 2015, Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, asserting that he is being detained illegally. Petitioner alleges that prior convictions used to sentence him as an armed career criminal do not qualify as crimes of violence under 18 U.S.C. 924(c). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for a Report and Recommendation.

The Magistrate Judge reviewed the petition pursuant to the Rules Governing § 2254 Cases, 28 U.S.C. § 2254; the Antiterrorism and Effective Death Penalty Act of 1995, and other legal precedents. The Magistrate Judge determined that Petitioner's remedy is to bring an action pursuant to 28 U.S.C. § 2255. Accordingly, the Magistrate Judge issued a Report and Recommendation on October 26, 2015, recommending that the § 2241 petition be dismissed without prejudice. In a footnote, the Magistrate Judge noted the possible application of Johnson v. United States, 135 S. Ct. 2551 (2015), but observing that, since Johnson had not been determined to be retroactive to cases on collateral review, addressing the merits of a Johnson claim under § 2241 would be premature.

Since the issuance of the Magistrate Judge's Report and Recommendation, Petitioner applied for and received from the Fourth Circuit Court of Appeals authorization to file a successive habeas application pursuant to Johnson. Petitioner filed a motion pursuant to 28 U.S.C. § 2255 on May 3, 2016. It appears that Petitioner has obtained an adequate remedy pursuant to § 2255. See In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997).

The court concurs in the recommendation of the Magistrate Judge. Petitioner's § 2241 motion is dismissed without prejudice and without requiring Respondent to file a return. Petitioner's motion for release (ECF No. 20) is **denied as moot**.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

July 1, 2016.